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REMARKS

The Examiner has again rejected Claims 1-4, 6-8, 10-17, and 20-22 under 35 U.S.C. 102(e) as being anticipated by Conklin et al. (USPN 5,991,881). Applicant respectfully disagrees with this assertion.

Specifically, in his latest action, the Examiner argues that applicant misinterprets the terminologies when comparing the limitations of the independent claims with applicant's quoted paragraph from Conklin. Moreover, the Examiner now relies on the abstract and col. 6, lines 40-43 from Conklin to meet applicant's claimed "discarding at least a portion of the accounting information that occurs during a surge in network traffic, based on the monitored aspect." Following are such excerpts.

> "This is a system and method for network surveillance and detection of attempted intrusions, or intrusions, into the network and into computers connected to the network. The System functions are: (A) intrusion detection monitoring, (B) real-time alert, (C) logging of potential unauthorized activity, and (D) incident progress analysis and reporting. Upon detection of any attempts to intrude, the System will initiate a log of all activity between the computer elements involved and send an alert to a monitoring console. When a log is initiated, the network continues to be monitored by a primary surveillance system. A secondary monitoring process is started which interrogates the activity log in real-time and sends additional alerts reporting the progress of the suspected intruder." (Abstract)

> "Third party evidence logging provides reliable data for determining appropriate response activities, such as restoring lost data, removing unauthorized programs, or disconnecting the system from the network temporarily." (col. 6, lines 40-43)

The Examiner summarizes applicant's arguments as being merely based on the "discarded" limitation. Applicant respectfully disagrees, as applicant teaches and claims "discarding at least a portion of the accounting information that occurs during a surge in network traffic, based on the monitored aspect," not just "discarding," as specifically claimed.

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It appears that the Examiner is relying on Conklin's "disconnecting the system from the network temporarily" language to meet applicant's claimed "discarding."

Applicant asserts, however, that such excerpts from Conklin are merely suggesting disconnecting network traffic, and not discarding "network accounting information" (emphasis added).

In use, network accounting information processors collect network accounting information relating to network traffic. In case of a surge in network traffic, such accounting information associated with the network traffic may become overly cumbersome for processor resources (i.e. memory, etc.).

Thus, only applicant teaches and claims a technique of dealing with "network accounting information," specifically, to prevent overflow of this particular type of information, during a surge in network traffic. It is noted that Conklin would prevent overall communication of network traffic via the network by virtue of its "disconnecting," while applicant's claimed invention may optionally allow such communication, while still avoiding "network accounting information" overflow.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. This criterion has simply not been met by the Conklin reference, at least in part, because it does not disclose discarding "network accounting information" based on a monitored aspect during a surge in network traffic.

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It is further noted that the Examiner's application of the prior art to the remaining claims is replete with deficiencies. Just by way of example, with respect to Claim 23, the Examiner relies on Conklin's teaching that "network specific characteristics or facts may be developed from the network data collection over time and stored in a database" to meet applicant's claimed "detecting a rate of receipt of the accounting information [and] detecting whether the rate of receipt of the accounting information exceeds a predetermined amount."

However, the mere discussion of network specific characteristics "over time" does not rise to the level of specificity to meet applicant's claimed predetermined rate threshold-based discarding of accounting information. Moreover, it is noted that the Examiner simply looks to Treka and Savoldi to meet applicant's claimed port scans and load detection. However, the proposed combination still fails to meet applicant's specific accounting information overload prevention technique involving the discarding of the same based on port scans and network load detection.

For these reasons, each of the independent claims are deemed allowable, along with any claims depending therefrom.

If the Examiner continues to disagree with applicant's arguments, applicant respectfully requests that an interview be scheduled to discuss the foregoing paramount distinctions, and possibly some additional claim language to emphasize the same.

Simply nowhere in the prior art is there such a combination of features for fulfilling the foregoing objectives.

A notice of allowance is respectfully requested.

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In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is hereby authorized to charge any fees that may be due or credit any overpayment to Deposit Account No. 50-1351 (Order No. XACTP001).

Respectfully submitted,

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